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ENRD

LPS

September 2, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mayor Ronald V. Dellums
Office of the Mayor
City of Oakland
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Oakland City Council/Redevelopment
Agency of the City of Oakland
Office of the City Clerk
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Oakland, CA 94612

Walter S. Cohen, Director
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250 Frank H. Ogawa Plaza, Suite 3315
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Community and Economic Development
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William Aboudi, President
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11 Burma Road
Oakland, CA 94607

William Aboudi, President
Oakland Maritime Support Services, Inc.
2505 Bataan Avenue
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William Aboudi
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Oakland Maritime Support Services, Inc.
1401 Georgia Street
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Jorge Gonzalez Rivera, Owner
Christian Brothers Truck Services
11 Burma Road
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10 SEP 13 AM 10:1

DEPT OF JUSTICE - ENRD
ENVIRONMENTAL PROTECTION

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Mayor Dellums, Members of the Oakland City Council and Redevelopment Agency Board, Director Cohen, Deputy Director Hunter, City Administrator Lindheim, and Messrs. Fanelli, Aboudi, and Gonzalez Rivera:

I am writing on behalf of the Northern California River Watch ("River Watch"), Teamsters Local 70, and East Bay Alliance For A Sustainable Economy (EBASE) (collectively "Alliance") in regard to violations of the Clean Water Act ("Act") that the Alliance believes are occurring at the Oakland Maritime Support Services, Inc. facility located at 11 Burma Road in Oakland, California, adjacent to the Port of Oakland (the "Facility"). River Watch is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other California waters. Teamsters Local 70 is a union based in Oakland, California that advocates for the health and well-being of workers throughout the East Bay, including members who live, work and recreate in and around the Port of Oakland area. EBASE is a non-partisan, non-profit organization advocating on behalf of workers and their families in the East Bay in order to make their communities vibrant and healthy places to live, work and play. This letter is being sent to the City of Oakland, the Redevelopment Agency of the City of Oakland, the Community and Economic Development Agency, Director Walter S. Cohen, Deputy Director Gregory Hunter, City Administrator Dan Lindheim, Frank Fanelli, Oakland Maritime Support Services, Inc., William Aboudi, Jorge Gonzalez Rivera, and Christian Brothers Truck Services as the responsible owners, officers, operators, or landlords of Oakland Maritime Support Services, Inc. and Christian Brothers Truck Services (all recipients are hereinafter collectively referred to as "OMSS and the City").

This letter addresses OMSS's and the City's unlawful discharges of pollutants from the Facility through the City of Oakland's municipal storm sewer system into the Port of Oakland Harbor and San Francisco Bay. OMSS and the City are discharging storm water without having obtained coverage pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit") or an individual NPDES permit in violation of Section 301(a) of the federal Clean Water Act, 33 U.S.C. § 1311(a). Alternatively, to the extent OMSS and the City file a notice of intent to comply with the General Permit, OMSS and the City are violating Sections 301(a) and 402 by failing to comply with the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility.

Consequently, OMSS and the City are hereby placed on formal notice by the Alliance that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, the Alliance intends to file suit in federal court against the City of Oakland, Redevelopment Agency of the City of Oakland, the Community and Economic Development Agency, Director Walter S. Cohen, Deputy Director Gregory Hunter, City Administrator Dan Lindheim, Frank Fanelli, Oakland Maritime Support Services, Inc., William Aboudi, and Christian Brothers Truck Services under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order.¹ These violations are described more extensively below.

I. Background.

OMSS operates a transportation support services facility located at 11 Burma Road, Oakland, California, 94607. The facility is engaged in maritime support services, including but not limited to the storage of truck tractors, containers and trailers by subleasing space to owner/operators and trucking companies, truck repair and maintenance, tire repair, container repair, trailer repair, and fueling services. Activities at the Facility fall within Standard Industrial Classification ("SIC") Industry Group 421, including SIC Codes 4212 and 4213, and Industry Group 423, including SIC Code 4231. The Facility covers 704,859 square feet of land located at the northern end of the Port of Oakland Harbor Facilities on land owned by the Redevelopment Agency of the City of Oakland. Oakland Maritime Support Services, Inc. leases the property from the Redevelopment Agency. The lease is a month-to-month lease. Under the lease, the Redevelopment Agency maintains control over the site, including but not limited to the authority to cancel the lease as a result of the tenant's violations of any federal law and to enter the Facility to inspect, test, clean, or make repairs, alterations and additions and take remedial actions with respect to environmental matters in the sole discretion of the Agency. Oakland Maritime Support Services, Inc. subleases the facility to various other trucking companies and other entities, including Christian Brothers Truck Services.

Observations of the Facility demonstrate that non-storm water and polluted storm water are being discharged to storm drains at the Facility.

Truck repair and maintenance activities are conducted near the eastern entrance to the Facility facing Maritime Avenue. Oil, grease, rinse water, soap residue, engine coolant, solvents, volatile organic compounds ("VOCs"), heavy metals associated with vehicle fluids and storm water falling on the maintenance area flow unobstructed to at least two storm drains adjacent to the repair and maintenance area. No storm water treatment measures are observed in or around those storm drains that would constitute the best available treatment technology economically available ("BAT") to prevent or control such discharges.

¹ On February 17, 2010, River Watch previously notified Oakland Maritime Support Services, Inc., William Aboudi, and Christian Brothers Truck Services of its intent to file suit. A lawsuit brought by River Watch currently is pending in the United States District Court for the Northern District of California. River Watch is sending this new notice in order to notify the City of its intent to file litigation against the City as well. In sending this notice, River Watch does not withdraw or otherwise affect in any way the previous notice of February 17, 2010.

Based upon information and belief, the Alliance believes vehicle maintenance and repairs are conducted throughout the Facility. Empty oil containers are readily observable discarded throughout the Facility. Numerous oil stains on the ground occur throughout the facility. Storm water falling on these oil-stained areas transport contaminated storm water, oil and grease, rinse water, soap residue, engine coolant, solvents, VOCs, heavy metals associated with vehicle fluids and flow unobstructed to numerous storm drains located throughout the Facility.

Vehicle and truck fueling are conducted throughout the Facility using a mobile fueling truck. Fueling activities result in diesel fuel spilling on the ground throughout the Facility. The fueling truck is also poorly maintained and outdated. Visible oil leaks can be observed on the side of the fueling truck and the ground beneath where it is parked. Diesel fuel, oil, heavy metals associated with those fluids and other pollutants are carried by storm water to storm drains throughout the Facility.

On occasion, containers of urine are disposed along the perimeter of the Facility. Based on information and belief, users of the Facility frequently urinate on the ground. Urine and other wastes, including nitrates and nitrites, are carried by storm water to storm drains throughout the Facility.

Discarded batteries, containers, discarded truck parts, tires, wire, truck trailers, miscellaneous trash, and other discarded or stored equipment are scattered throughout the Facility. Pollutants including battery acid, trash, heavy metals, and oil and grease associated with discarded and stored materials at the site are carried by storm water to storm drains throughout the Facility.

At its closest point, the Facility is located within a few hundred feet of San Francisco Bay. On information and belief, there appear to be as many as two dozen storm drains that receive storm water flows from the Facility. Storm water from the Facility enters storm drains on or adjacent to the site and is then conveyed through storm drains to either of two or possibly three outfalls and discharged directly into San Francisco Bay.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay as well as its tributaries, including the Oakland Harbor in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. See http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies

require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of Oakland Harbor and the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); lead of 0.0081 mg/L (4 day average) and 0.21 mg/L (1-hour average); nickel of 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average); cadmium of 0.0093 mg/L (4-day average) and 0.042 mg/L (1-hour average) and chromium VI of 0.050 mg/L (4-day average) and 1.1 mg/L (1-hour average). *Id.* at Table 3-3.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). 65 Fed.Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by OMSS: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, cadmium – 0.0159 mg/L, zinc – 0.117 mg/L, copper – 0.0636 mg/L, nickel – 1.417 mg/L, lead – 0.0816 mg/L, aluminum – 0.75 mg/L, and iron – 1.0 mg/L. The State Water Resources Control Board (“State Board”) also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Discharges of Industrial Storm Water and Pollutants to Waters of the United States Without a NPDES Permit.

OMSS and the City have violated the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, by discharging pollutants to waters of the United States from the Facility without a NPDES permit as required by the Act. The Clean Water Act provides that, absent a permit and subject to certain limitations, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). A review of available public records indicates that OMSS and the City have failed to file a Notice of Intent to Comply with the General Permit or otherwise obtain a NPDES permit authorizing discharges of pollutants and contaminated storm water from the Facility. OMSS and the City have been in continuous, daily violation of the General Permit and the Act since it began operation at the Facility. Based on information and belief, OMSS and the City have operated the Facility since at least August 7, 2006 or any other date on which OMSS began operations at the site, whichever is earlier, and is subject to penalties for these violations occurring since that date.

III. Discharges in Violation of Section 402(p) of the CWA and Failure to Comply with the Prohibitions and Discharge Requirements of the General Industrial Storm Water Permit

Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Therefore, OMSS and the City have violated the Act each time that OMSS has discharged storm water or wash water contaminated with pollutants at levels that exceed any applicable water quality standards at the point where storm water leaves the Facility. The Alliance believes that since OMSS began operations at the Facility, OMSS and the City have discharged storm water containing pollutants and storm water associated with industrial activity from the Facility to storm drains at the Facility leading to waters of the United States at least each day with a significant rain event at or near the Facility. Every discharge to storm drains at the Facility exceeds one or more applicable water quality standard, including but not limited to each of the following:

Copper – 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average)
Nickel – 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average)
Zinc – 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average)
Cadmium – 0.0093 mg/L (4-day average) and 0.042 mg/L (1-hour average)
Lead – 0.0081 mg/L (4-day average) and 0.210 mg/L (1-hour average)
Chromium – 0.050 mg/L (4-day average) and 1.1 mg/L (1-hour average)
Oil & Grease – no sheen
pH – not less than 6.5 or greater than 8.5

The Alliance alleges that such violations also have occurred and will occur on every significant rain event that has occurred since at least August 7, 2006 or any earlier date by which OMSS began operating the Facility, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Exhibit A, attached hereto, sets forth specific rain dates on which the Alliance alleges that OMSS and the City have discharged storm water

containing pollutants in violation of the Act and of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit. The Alliance also place OMSS and the City on notice that OMSS and the City have committed violations of the Act on each date on which the Facility has discharged non-storm water including fuel, oil and grease, rinse water, wash water, urine, or other wastes to the storm drains at the Facility.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing pollutants at unacceptable levels from the Facility constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, OMSS and the City are subject to penalties for violations of the General Industrial Storm Water Permit and the Act since it began operating the Facility.

IV. Failure to Comply with the Pollution Prevention, Monitoring and Pollution Control Technology Requirement of the General Industrial Storm Water Permit.

The General Permit requires storm water dischargers to comply with its terms, including, *inter alia*, the development and implementation of a Storm Water Pollution Prevention Program ("SWPPP"), the development and implementation of a Monitoring and Reporting Program, the implementation of Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") and the elimination of non-storm water discharges. OMSS and the City have not complied with the terms of the General Permit. Among other things, OMSS and the City have not prepared and implemented an adequate SWPPP or an adequate Monitoring and Reporting Program for the Facility.

Further, OMSS and the City have not implemented BAT/BCT to control the discharge of pollutants in storm water at the Facility. The Alliance's ongoing investigation indicates that the Facility lacks any structural best management practices to prevent storm water from coming into contact with pollutant sources and/or measures to prevent contaminated storm water from being discharged from the Facility without treatment.

A. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement an adequate SWPPP no later than October 1, 1992 and to continuously update the SWPPP and its implementation to reflect BAT and BCT storm water controls. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water

discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Industrial Storm Water Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Industrial Storm Water Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Industrial Storm Water Permit, Section A(4)); a list of significant materials handled and stored at the site (General Industrial Storm Water Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Industrial Storm Water Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Industrial Storm Water Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Industrial Storm Water Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

The Alliance's investigation of the conditions at the Facility demonstrates that OMSS and the City have been operating the Facility without an adequate SWPPP in violation of the requirements set forth above. OMSS and the City have failed to evaluate the effectiveness of the Facility's BMPs (indeed, it appears that neither OMSS nor the City have installed any BMPs at the Facility) and to revise a SWPPP as necessary. OMSS and the City have been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since OMSS began operation at the Facility, and will continue to be in violation every day that OMSS and the City fail to develop and implement an effective SWPPP. OMSS and the City are subject to penalties for violations of the Order and the Act occurring since OMSS began operations.

B. Failure to Develop and Implement an Adequate Storm Water Monitoring Plan

Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." (emphasis added) Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total

organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) requires that "samples shall be analyzed for . . . [t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities."

OMSS and the City have failed to comply with Section B(5)(a) of the General Industrial Storm Water Permit by failing to collect storm water samples during the first hour of discharge from the first storm event of the wet season and from at least one other storm event per year during each Wet Season since it began operations at the Facility. OMSS and the City also violated Section B(5) by failing to collect storm water samples from all storm water discharge locations at the Facility in each of the years it was required to sample. OMSS and the City also failed to conduct visual observations of every discharge point at the Facility at least once per month during each wet season over the past five years.

OMSS and the City also have failed to analyze storm water samples for all chemicals and pollutants that are "likely to be present in storm water discharges in significant quantities." See Section B(5)(c)(ii). The Alliance is informed and believes that at least the following pollutants are "likely" to be present in the Facility's storm water discharges in significant quantities: aluminum, cadmium, chromium, copper, iron, lead, manganese, nickel, zinc, and nitrate + nitrite as nitrogen. OMSS' and the City's ongoing failure to analyze storm water samples for these and other pollutants likely to be present in the Facility's storm water discharges constitutes ongoing violations of the Act.

Each of OMSS' and the City's failures to comply with these mandatory monitoring requirements constitutes an ongoing violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, OMSS and the City are subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since OMSS began operations at the Facility.

C. Failure to Implement BAT and BCT.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Industrial Storm Water Permit, Section A(8). The Alliance's investigation indicates that OMSS and the City have not implemented BAT and BCT at the Facility for its discharges of pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

OMSS and the City were required to have implemented BAT and BCT when OMSS began operations at the Facility. OMSS and the City have been in continuous violation of the BAT and BCT requirements every day since at least August 7, 2006 or any earlier date when its operation of the Facility began, and will continue to be in violation every day that OMSS and the City fail to implement BAT and BCT. OMSS and the City are subject to penalties for violations of the Order and the Act occurring since OMSS began operations at the Facility.

D. Failure to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the Alliance is informed and believe that OMSS and the City discharge storm water containing pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, OMSS and the City were required to submit a report pursuant to Receiving Water Limitations C(3) and C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. Based on the Alliance's review of available documents, OMSS and the City have never filed a timely report describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d).

OMSS and the City have been in continuous violation of Receiving Water Limitations C(3), C(4)(a), C(11)(d), E(6) and A(9) of the General Industrial Storm Water Permit every day since at least August 7, 2006, and will continue to be in violation every day that OMSS and the City fail to prepare and submit the requisite reports, receive approval from the Regional Board and amend the Facility's SWPPP to include approved BMPs. OMSS and the City are subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since OMSS began operations at the Facility.

E. Failure to File Timely, True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Industrial Storm Water Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Industrial Storm Water Permit, Sections C(9) and (10) and B(14).

The Alliance's investigation indicates that OMSS and the City have never filed an Annual Report with the Regional Board in violation of the General Industrial Storm Water Permit. OMSS' and the City's failure to file Annual Reports are continuous and ongoing violations. OMSS and the City are subject to penalties for violations of Sections (B) and (C) of the General Industrial Storm Water Permit and the Act occurring since OMSS began operations at the Facility.

V. Persons Responsible for the Violations.

The Alliance puts the City of Oakland, Redevelopment Agency of the City of Oakland, the Community and Economic Development Agency, Director Walter S. Cohen, Deputy Director Gregory Hunter, City Administrator Dan Lindheim, Frank Fanelli, Oakland Maritime Support Services, Inc., William Aboudi, and Christian Brothers Truck Services on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, the Alliance puts the City of Oakland, Redevelopment Agency of the City of Oakland, the Community and Economic Development Agency, Director Walter S. Cohen, Deputy Director Gregory Hunter, City Administrator Dan Lindheim, Frank Fanelli, Oakland Maritime Support Services, Inc., William Aboudi, and Christian Brothers Truck Services on notice that the organizations intend to include those persons in this action.

VI. Name and Address of Noticing Party.

Our names, addresses and telephone numbers are as follows:

Lisa H. Mador, Secretary of the Board
Northern California River Watch
500 North Main St., Suite 110
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Tel. (707) 824-4372

Doug Bloch
Teamsters Local 70
400 Roland Way
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Tel: (415) 467-7768 or (510) 569-9317

Nikki Fortunato Bas, Executive Director
EBASE
1814 Franklin Street, Suite 325
Oakland, CA 94612
Tel: (510) 893-7106

VII. Counsel.

The Alliance has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Richard T. Drury
Douglas J. Chermak
Lozeau Drury LLP
410 12th Street, Suite 250
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VIII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects OMSS and the City to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, the Alliance will seek declaratory relief and injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Alliance believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. The Alliance intends to file a citizen suit under Section 505(a) of the Act against the City of Oakland, Redevelopment Agency of the City of Oakland, the Community and Economic Development Agency, Director Walter S. Cohen, Deputy Director Gregory Hunter, City Administrator Dan Lindheim, Frank Fanelli, Oakland Maritime Support Services, Inc., William Aboudi, and Christian Brothers Truck Services and their respective agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, the Alliance would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be

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Notice of Intent to Sue
September 2, 2010
Page 13

completed before the end of the 60-day notice period. The Alliance does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Michael R. Lozeau
Lozeau Drury LLP
Attorneys for Northern California River Watch, Teamsters Local 70,
and East Bay Alliance For A Sustainable Economy (EBASE)

SERVICE LIST

**Via Registered Mail, Certified Receipt
Requested:**

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Via First Class Mail:

John Russo, City Attorney
Office of the City Attorney
City Hall, 6th Floor
1 Frank H. Ogawa Plaza
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Port of Oakland, California

September 19, 2004	February 17, 2005	May 19, 2005
October 17, 2004	February 18, 2005	May 21, 2005
October 19, 2004	February 19, 2005	May 22, 2005
October 20, 2004	February 20, 2005	May 25, 2005
October 23, 2004	February 21, 2005	May 26, 2005
October 25, 2004	February 22, 2005	May 29, 2005
October 26, 2004	February 27, 2005	June 2, 2005
November 3, 2004	February 28, 2005	June 3, 2005
November 4, 2004	March 1, 2005	June 5, 2005
November 10, 2004	March 2, 2005	October 15, 2005
November 11, 2004	March 3, 2005	October 26, 2005
November 13, 2004	March 4, 2005	October 29, 2005
November 27, 2004	March 18, 2005	November 3, 2005
December 6, 2004	March 19, 2005	November 4, 2005
December 7, 2004	March 20, 2005	November 7, 2005
December 8, 2004	March 21, 2005	November 8, 2005
December 9, 2004	March 22, 2005	November 12, 2005
December 15, 2004	March 23, 2005	November 25, 2005
December 18, 2004	March 27, 2005	November 28, 2005
December 20, 2004	March 29, 2005	November 29, 2005
December 26, 2004	April 3, 2005	November 30, 2005
December 27, 2004	April 8, 2005	December 1, 2005
December 28, 2004	April 19, 2005	December 7, 2005
December 29, 2004	April 21, 2005	December 17, 2005
December 30, 2004	April 22, 2005	December 18, 2005
December 31, 2004	April 23, 2005	December 19, 2005
January 1, 2005	April 24, 2005	December 20, 2005
January 2, 2005	April 25, 2005	December 21, 2005
January 3, 2005	April 26, 2005	December 22, 2005
January 7, 2005	April 28, 2005	December 25, 2005
January 8, 2005	May 1, 2005	December 26, 2005
January 9, 2005	May 3, 2005	December 27, 2005
January 10, 2005	May 4, 2005	December 28, 2005
January 11, 2005	May 5, 2005	December 29, 2005
January 25, 2005	May 6, 2005	December 30, 2005
January 26, 2005	May 8, 2005	December 31, 2005
January 27, 2005	May 9, 2005	January 1, 2006
January 28, 2005	May 12, 2005	January 2, 2006
January 29, 2005	May 13, 2005	January 3, 2006
February 14, 2005	May 15, 2005	January 4, 2006
February 15, 2005	May 17, 2005	January 7, 2006
February 16, 2005	May 18, 2005	January 11, 2006

ATTACHMENT A **Rain Dates, Port of Oakland, California**

January 14, 2006	April 11, 2006	February 9, 2007
January 17, 2006	April 12, 2006	February 10, 2007
January 18, 2006	April 15, 2006	February 11, 2007
January 21, 2006	April 16, 2006	February 12, 2007
January 27, 2006	April 23, 2006	February 22, 2007
January 28, 2006	October 4, 2006	February 24, 2007
January 30, 2006	October 10, 2006	February 25, 2007
February 1, 2006	October 11, 2006	February 26, 2007
February 2, 2006	October 12, 2006	February 27, 2007
February 4, 2006	October 13, 2006	March 13, 2007
February 17, 2006	October 15, 2006	March 15, 2007
February 18, 2006	October 16, 2006	March 17, 2007
February 26, 2006	October 17, 2006	March 20, 2007
February 27, 2006	October 18, 2006	March 23, 2007
February 28, 2006	October 21, 2006	March 26, 2007
March 1, 2006	October 22, 2006	March 27, 2007
March 2, 2006	October 23, 2006	March 29, 2007
March 3, 2006	October 26, 2006	March 30, 2007
March 5, 2006	October 27, 2006	March 31, 2007
March 6, 2006	October 29, 2006	April 2, 2007
March 7, 2006	November 2, 2006	April 3, 2007
March 9, 2006	November 11, 2006	April 6, 2007
March 10, 2006	November 12, 2006	April 7, 2007
March 11, 2006	November 13, 2006	April 10, 2007
March 12, 2006	November 22, 2006	April 11, 2007
March 13, 2006	November 23, 2006	April 12, 2007
March 14, 2006	November 26, 2006	April 14, 2007
March 16, 2006	November 27, 2006	April 16, 2007
March 17, 2006	December 8, 2006	April 17, 2007
March 20, 2006	December 9, 2006	April 19, 2007
March 24, 2006	December 10, 2006	April 20, 2007
March 25, 2006	December 11, 2006	April 21, 2007
March 27, 2006	December 12, 2006	April 22, 2007
March 28, 2006	December 13, 2006	May 2, 2007
March 29, 2006	December 15, 2006	May 3, 2007
March 30, 2006	December 21, 2006	May 4, 2007
March 31, 2006	December 26, 2006	May 10, 2007
April 1, 2006	December 27, 2006	December 4, 2007
April 2, 2006	January 3, 2007	December 6, 2007
April 3, 2006	January 16, 2007	December 7, 2007
April 4, 2006	January 24, 2007	December 16, 2007
April 5, 2006	January 27, 2007	December 17, 2007
April 7, 2006	January 31, 2007	December 18, 2007
April 9, 2006	February 7, 2007	December 19, 2007
April 10, 2006	February 8, 2007	December 20, 2007

ATTACHMENT A **Rain Dates, Port of Oakland, California**

December 27, 2007	October 8, 2008	March 22, 2009
December 28, 2007	October 9, 2008	April 7, 2009
December 29, 2007	October 30, 2008	April 8, 2009
January 3, 2008	October 31, 2008	April 9, 2009
January 4, 2008	November 1, 2008	May 1, 2009
January 5, 2008	November 3, 2008	May 2, 2009
January 6, 2008	November 8, 2008	May 3, 2009
January 7, 2008	November 26, 2008	May 4, 2009
January 8, 2008	December 1, 2008	May 5, 2009
January 9, 2008	December 6, 2008	June 3, 2009
January 10, 2008	December 14, 2008	July 25, 2009
January 11, 2008	December 15, 2008	October 13, 2009
January 13, 2008	December 18, 2008	October 14, 2009
January 21, 2008	December 19, 2008	October 19, 2009
January 22, 2008	December 21, 2008	November 6, 2009
January 23, 2008	December 24, 2008	November 14, 2009
January 24, 2008	December 25, 2008	November 20, 2009
January 25, 2008	December 31, 2008	November 27, 2009
January 26, 2008	January 2, 2009	December 6, 2009
January 27, 2008	January 5, 2009	December 7, 2009
January 28, 2008	January 6, 2009	December 10, 2009
January 29, 2008	January 21, 2009	December 11, 2009
January 30, 2008	January 22, 2009	December 12, 2009
January 31, 2008	January 23, 2009	December 13, 2009
February 1, 2008	February 5, 2009	December 16, 2009
February 2, 2008	February 6, 2009	December 18, 2009
February 3, 2008	February 8, 2009	December 20, 2009
February 19, 2008	February 10, 2009	December 21, 2009
February 21, 2008	February 11, 2009	December 26, 2009
February 22, 2008	February 13, 2009	December 27, 2009
February 23, 2008	February 14, 2009	December 29, 2009
February 24, 2008	February 15, 2009	December 30, 2009
March 13, 2008	February 16, 2009	January 1, 2010
March 14, 2008	February 17, 2009	January 12, 2010
March 18, 2008	February 22, 2009	January 13, 2010
March 21, 2008	February 23, 2009	January 16, 2010
March 27, 2008	February 24, 2009	January 17, 2010
March 28, 2008	February 25, 2009	January 18, 2010
March 29, 2008	February 26, 2009	January 19, 2010
April 1, 2008	March 1, 2009	January 20, 2010
April 3, 2008	March 2, 2009	January 21, 2010
April 4, 2008	March 3, 2009	January 22, 2010
April 6, 2008	March 4, 2009	January 23, 2010
April 8, 2008	March 5, 2009	January 24, 2010
October 4, 2008	March 15, 2009	January 25, 2010

ATTACHMENT A

Rain Dates, Port of Oakland, California

January 26, 2010	March, 25, 2010
January 29, 2010	March, 29, 2010
January 30, 2010	March, 30, 2010
February, 4, 2010	March, 31, 2010
February, 5, 2010	April 2, 2010
February, 6, 2010	April 4, 2010
February, 8, 2010	April 5, 2010
February, 9, 2010	April 11, 2010
February, 12, 2010	April 12, 2010
February, 19, 2010	April 20, 2010
February, 21, 2010	April 21, 2010
February, 23, 2010	April 27, 2010
February, 24, 2010	April 28, 2010
February, 26, 2010	May 9, 2010
February, 27, 2010	May 10, 2010
March, 2, 2010	May 14, 2010
March, 3, 2010	May 17, 2010
March, 8, 2010	May 18, 2010
March, 9, 2010	May 25, 2010
March, 10, 2010	May 26, 2010
March, 12, 2010	May 27, 2010
March, 13, 2010	June 18, 2010
March, 24, 2010	June 25, 2010

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2. Article Number
(Transfer from service)

PS Form 3811, February 20

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

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